

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of LAMOND BROADUS, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

LAMOND BROADUS,

Respondent-Appellant.

UNPUBLISHED

October 20, 2009

No. 288179

Wayne Circuit Court

Family Division

LC No. 05-443728

Before: Fort Hood, P.J., and Sawyer and Donofrio, JJ.

PER CURIAM.

Respondent Lamond Broadus (DOB 11/17/90) appeals as of right the August 12, 2008, order revoking his probation and placing him in a psychiatric facility to receive psychiatric and inpatient drug treatment entered pursuant to MCL 712A.18(1)(e). Because respondent has failed to provide support for his claim of ineffective assistance of counsel, we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Respondent was first placed on probation based on a finding by the trial court of juvenile delinquency under MCL 712A.2(a)(3), often referred to as the ground of “incurability.” After completing a residential treatment program, respondent was placed in foster care. On March 14, 2008, respondent’s caseworker learned that respondent had run away from his foster home. The case manager filed a violation of probation petition. After respondent voluntarily surrendered, the trial court conducted a bench trial. At the hearing, after respondent admitted that he had left the home, ostensibly because his foster mother had shown him disrespect and because he did not like the cooking. Respondent’s mother provided a statement concerning her attempts to obtain psychological treatment for him. The trial court stated that respondent “needs psychiatric help” and called the attorneys to the bench. After a short bench conference, respondent’s counsel stated:

Oh, your Honor, the only thing I was going to ask for is a referral to the Clinic for a Competency for Lamond. I just don’t think he understands everything that’s going on here, from what his mother’s told me about his history. I don’t know if he has the competency to complete a program.

There's some things that we talked about, or tried to talk about, and he didn't seem to grasp the significance of it.

The trial court found that respondent had violated his probation. The trial court decided that it would deviate from the caseworker's recommendation, and ordered respondent placed in a facility that could "deal with his psychiatric issues." The trial court also stated that it would order "drug treatment, and a competency examination." The prosecutor then pointed out that a competency evaluation would not be applicable since respondent had already been found guilty of violating his probation. The trial court acknowledged that statement, and set the date for a subsequent hearing.

Respondent was sent to Harbor Oaks Hospital on September 18, 2008. He successfully completed the inpatient program, which included individual and group counseling, substance abuse education, and mental health services. He was released and returned to his mother's home on March 6, 2009.

On appeal, respondent argues that counsel provided ineffective assistance, apparently because counsel did not earlier raise the issue of whether respondent was competent. Respondent contends that counsel's failure resulted in an improper adjudication concerning the probation violation before the competency issue was resolved.

"Effective assistance of counsel is presumed, and [a] defendant bears a heavy burden of proving otherwise." *People v McGhee*, 268 Mich App 600, 625; 709 NW2d 595 (2005). "In order to overcome this presumption, defendant must first show that counsel's performance was deficient as measured against an objective standard of reasonableness under the circumstances and according to prevailing professional norms." *Id.* "Second, defendant must show that the deficiency was so prejudicial that he was deprived of a fair trial such that there is a reasonable probability that but for counsel's unprofessional errors the trial outcome would have been different." *Id.* Because no *Ginther*¹ hearing was held, our review of respondent's claim is limited to mistakes apparent on the record. *People v Cox*, 268 Mich App 440, 453; 709 NW2d 152 (2005); *People v Williams*, 223 Mich App 409, 414; 566 NW2d 649 (1997).

We review a trial court's decision concerning a defendant's competence to stand trial for an abuse of discretion. *People v Harris*, 185 Mich App 100, 102; 460 NW2d 239 (1990). An abuse of discretion occurs when the court selects an outcome that is outside the range of reasonable and principled outcomes. *People v Orr*, 275 Mich App 587, 588-589; 739 NW2d 385 (2007).

The subjection of an incompetent defendant to a criminal trial violates that defendant's right to due process. *Cooper v Oklahoma*, 517 US 348, 354; 116 S Ct 1373; 134 L Ed 2d 498 (1996). Accordingly, our Legislature has established procedures for determining competency. MCL 330.2020 *et seq.* To this end, MCL 333.2020(1) provides:

¹ *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973).

A defendant to a criminal charge shall be presumed competent to stand trial. He shall be determined incompetent to stand trial only if he is incapable because of his mental condition of understanding the nature and object of the proceedings against him or of assisting in his defense in a rational manner. The court shall determine the capacity of a defendant to assist in his defense by his ability to perform the tasks reasonably necessary for him to perform in the preparation of his defense and during his trial.

The statute requires that, “a criminal defendant’s mental condition at the time of trial must be such as to assure that he understands the charges against him and can knowingly assist in his defense.” *People v McSwain*, 259 Mich App 654, 692; 676 NW2d 236 (2003). If a showing is made that a defendant may be incompetent to stand trial, the court must order the defendant to undergo an evaluation at the Center for Forensic Psychiatry or another certified facility. MCL 330.2026(1). This Court has held that it is a due process right not to be subjected to the adjudicative phase of a delinquency proceeding while not competent. Mental Health Code provisions regarding competency applicable to criminal defendants “provide a useful guide” to trial courts for the adjudication of competency determinations in juvenile cases. *In re Carey*, 241 Mich App 222, 233-234; 615 NW2d 742 (2000).

Here, trial counsel arguably erred. If counsel thought that respondent was not competent to stand trial prior to the start of the hearing, nothing suggests a rationale for waiting until the end of the adjudication to request an evaluation. If, as petitioner suggests, respondent’s attorney later realized that respondent’s competency might be an issue, counsel arguably should have pointed out the trial court’s apparent error in simultaneously finding respondent guilty of a probation violation and ordering the competency hearing.

However, whether the error here was that of defense counsel, the prosecutor, the trial court, or a combination thereof, respondent cannot show that he is entitled to relief. As petitioner notes, respondent does not contend on appeal that he was not competent during the adjudication. Nor would such a contention be supportable under the circumstances. The record provided to this Court contains respondent’s progress report from the hospital. Respondent’s diagnosis consisted of conduct disorder, mood disorder “NOS” (not otherwise specified), and cannabis abuse. The report also states that respondent’s treatment issues “appear to revolve largely around anger management, emotional stability related to past traumatic experiences, and peer relationships.” His treatment consisted of therapy and a “mood stabilizer.” Nothing in the report suggests an inability to understand the nature and object of the proceedings against him or assist in his defense in a rational manner. Given the evidence provided to this Court, respondent cannot show that it was even remotely likely that he would have been judged incompetent had an evaluation taken place. The fact that respondent satisfactorily completed the five-step program and was returned to his mother’s home also undercuts a finding that the outcome would have been different if not for counsel’s error. Respondent has failed to provide support for his claim of ineffective assistance of counsel.

Affirmed.

/s/ Karen M. Fort Hood
/s/ David H. Sawyer
/s/ Pat M. Donofrio